cases. See *Beardsley* v. *Beardsley*, 138 U. S. 262; *Andrew* v. *Colorado Savings Bank*, 20 Colo. 313, 36 Pac. Rep. 902, 36 Am. St. Rep. 291. Contracts substantially the same as that in the Oregon case, have been held to be sales upon condition subsequent. *Murch* v. *Wright*, 46 Ill. 487, 95 Am. Dec. 455. And see *Gerow* v. *Costello*, 11 Colo. 560, 19 Pac. Rep. 505; *Day* v. *Bassett*, 102 Mass. 445. In *Southern Music Co.* v. *Dusenbury*, 27 S. C. 464, 4 S. E. Rep. 60, apparently the same thing was held to be a lease with an option in the lessee to become the owner. However, the weight of authority is with the Oregon case.

SALES—IMPLIED WARRANTY—SECOND HAND MACHINERY. The defendant ordered a second hand engine "known as Divine Engine, No. 1865," of plaintiff, who was a manufacturer of new and a dealer in old machinery not of his manufacture. The sale contract appeared on a printed blank form and by the form was made subject to a warranty printed thereon. It was expressly stated, however, in the printed warranty that such warranty did not apply to second hand machinery. Defendant bought the engine for the purpose, communicated to seller, of running his threshing machine therewith. In this purpose the engine failed through patent defects. In an action brought by plaintiff for the price, *Held*, the statement in the printed warranty that it did not apply to second hand machinery, did not preclude an implied warranty that the engine was fit and suitable for the purpose for which it was bought. *New Birdsall Co.* v. *Keyes* (1903), — Mo. — 74 S. W. Yep. 12.

Since this warranty arises from the nature of the transaction and the relation of the parties without express words or even actual intention, it will remain as part of seller's obligation unless in some way expressly excluded. MECHEM ON SALES, §1258. The court's construction that the implied warranty in this case was not excluded by the language, seems to be correct, though the parties, or at least the seller, clearly intended to expressly exclude all warranties. The court erroneously states the rule thus: "In a sale of personal property for a specific purpose, there is an implied warranty that it is fit and suitable for that purpose." This excludes one of the essential conditions of the rule, viz., the seller must have been relied upon to supply an article to suit the buyer's purpose, no specific chattel being contemplated. See MECHEM ON SALES, § 1344, citing cases, *ibid.* §§ 1345 and 1349. BENJAMIN ON SALES, (7th Am. Ed.), p. 646, for expressions of the true rule. From the report of the case under discussion the specific respects in which the engine was defective do not appear. It would seem that if it were a sufficient second hand Divine Engine, No. 1865. as such, though this particular kind of engine were not suitable for running threshing machines, that implied warranty would not attach inasmuch as the buyer would have gotten what he had particularly designated. See MECHEM ON SALES, §§ 1349 and 1355; cases in note, p. 689 in BENJAMIN ON SALES (7th Am. Ed.) and § 657 of the latter. Clearly this would be so where the parties both knew what was meant by such particular designation. See *Morris* v. *Bradley Fertilizer Co.*, 64 Fed. Rep. 55. *Chantor* v. *Hopkins*, 4 M. & W. 399. In apparent conflict with the Missouri decision, appears in MECHEM ON SALES, § 1348, the following: "It is said also that the warranty will not attach where the article e. g., machinery is expressly sold as a second hand article," referring to the implied warranty in question. But it cannot have been intended, it seems, by this that where all the conditions essential to the rule (See Mechem on Sales, § 1344, above referred to) are present in the sale of a chattel, the mere additional fact that the article was expressly sold as a second hand article would preclude an implied warranty of fitness for an intended use. Nor do the cases cited under the proposition support it if we presume that the above construction was intended.